

Supplemental Declaration of Richard L. Kilpatrick

1. I, Richard L. Kilpatrick, declare as follows:
2. I am the same Richard L. Kilpatrick as that of the earlier Declaration of Richard L. Kilpatrick dated December 9, 2003.
3. Based on my experience, prior to the rebond foam carpet tile invention of Milliken & Company, a person of ordinary skill in the carpet tile art would not have been motivated to substitute a rebond foam (such as a typical rebond foam pad used under broadloom carpet) for the filled, virgin polyurethane foam of Milliken's Comfort Plus® cushion back carpet tile (described, for example, in the Higgins '881, '500, and '276 patents).
4. Polyurethane cushion back carpet tile, such as Milliken's Comfort Plus cushion back carpet tiles (described, for example, in the Higgins '881, '500, and '276 patents) are highly engineered, dimensionally stable, durable products.
5. Carpet tiles must be dimensionally stable to be installed as carpet tile and to withstand the rigors of use.
6. Carpet tiles are subjected in use to point loads (high heels, table legs), dynamic loads (shoe heels), walking traffic, rolling traffic, scuffing, chair casters, and the like.
7. Carpet tiles must not only be dimensionally stable, but also durable.
8. Milliken & Company puts its carpet tiles through a myriad of tests to ensure that they are suited for use as commercial carpet tile (rated for heavy commercial use).
9. Milliken & Company uses a number of carpet tile tests including caster chair, Gmax, hexapod, ball bounce, delamination, and chamber flatness.
10. Over the years, there have been many failed attempts to make commercially viable cushion back carpet tile.
11. Milliken & Company developed a first polyurethane cushion back carpet tile in about 1984 (subject of Higgins '857 patent). Milliken & Company began marketing an improved polyurethane cushion back carpet tile in about 1994 (subject of Higgins '881, '500, and '276 patents). Milliken & Company did not develop a polyurethane rebond foam cushion back carpet tile until about 2000 (16 years after its first polyurethane cushion back tile).

12. The carpet tile industry is afraid of tile failure, such as latent defects, because such failures are expensive to remedy.
13. Typical rebond foam broadloom carpet underlay or pad has been around for years.
14. Attached cushion broadloom (virgin foam on the back of broadloom carpet) has also been around for years.
15. Carpet tiles are more than just broadloom carpet cut into squares.
16. Prior to Milliken & Company making carpet tiles using polyurethane rebond foam, I am not aware of any other carpet tiles made with rebond foam.
17. Rebond foam pad was considered as a substandard material of inadequate consistency and durability for use in carpet tile.
18. Rebond foam pad worked as pad under broadloom carpet (but was not perceived to be of sufficient consistency, durability, strength, thickness, uniformity, and the like to serve as cushion in a carpet tile).
19. Milliken & Company has been the leader in polyurethane cushion back carpet tile since at least about 1988 and continued to consider filled, virgin polyurethane foam as the foam of choice for carpet tile until about 2000.
20. It would not have been obvious to one of ordinary skill in the carpet tile art to use rebond foam rather than virgin polyurethane foam in a preformed carpet tile.
21. It was surprising and unexpected that rebond foam would work as well as virgin polyurethane foam in a carpet tile.
22. It was unbelievable to me and others that a rebond foam would make a commercially viable, cushion back carpet tile that performed.
23. Hence, it would not have been obvious for one of ordinary skill in the carpet tile art to modify the Higgins '857 carpet tile structure to incorporate the rebond foam disclosed in the De Simone '207 patent.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, and that such willful false statements may jeopardize the validity of the current application or any patent issued thereon.

Respectfully submitted,

Sept. 22, 2004  
Date

Richard L. Kilpatrick  
Richard L. Kilpatrick